

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BOARD OF TRUSTEES OF THE MASONRY SECURITY PLAN OF WASHINGTON, et al.,

Plaintiffs,

V.

ETHAN ENTERPRISES, INC., a Washington corporation,

Defendants.

CASE NO. C04-659RSM

ORDER

This matter is before the Court for consideration of defendant's motion to continue the trial date.

Having reviewed the motion, opposition, and attached declarations and exhibits, the Court finds that a continuance is warranted.

Defendant has demonstrated that Rocky McNeill, a fact witness on the crucial issue of whether Ethan Enterprises is the corporate alter ego of the bankrupt Tift & Young Enterprises, was not disclosed by plaintiffs until May 25, 2005. Plaintiffs argue that this witness's testimony should be "no surprise" to defendant, and further that defendant has not been prejudiced by the late disclosure. However, plaintiffs have not offered any justification for this late disclosure. Defendant should have an opportunity to depose this witness and prepare a defense. The alternative would be, as defendants argue, to consider a motion in limine to exclude this witness's testimony, an undesirable result for plaintiff.

In the interest of a full and fair presentation of all the evidence, the Court rules that defendant's

ORDER ON MOTION TO CONTINUE TRIAL
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1 motion is GRANTED. The trial date of July 18, 2005, and all associated pre-trial preparation dates, are
2 STRICKEN. The Clerk is directed to issue a new scheduling Order with a trial date set on or after
3 September 19, 2005.

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5 DATED this 17th day of June, 2005.

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7 /s/ Ricardo S. Martinez
RICARDO S. MARTINEZ
8 United States District Judge

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28 ORDER ON MOTION TO CONTINUE TRIAL
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